

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALCAN INC. and
ALCAN ALUMINUM CORP.,

Defendants.

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) Case No. 1:03CV02012
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) DECK TYPE: Antitrust
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) DATE STAMP: Sept. 29, 2003
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HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties,
subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. “Acquirer” means the entity or entities to whom defendants divest
Pechiney’s Brazing Sheet Business.

B. “Alcan” means defendant Alcan Inc., a Canadian corporation with its
headquarters in Montreal, Canada, its successors and assigns, and its subsidiaries
(including defendant Alcan Aluminum Corp.), divisions, groups, affiliates,
partnerships, joint ventures, and their directors, officers, managers, agents, and
employees. The terms “subsidiary,” “affiliate” and “joint venture” refer to any
person (including, after the date that Alcan’s tender offer for Pechiney ends,

Pechiney) in which Alcan has or would obtain partial (25 percent or more) or total ownership or control.

C. “Pechiney” means Pechiney, S.A., a French corporation with its headquarters in Paris, France, and its successors and assigns, its subsidiaries, divisions (including Pechiney Rolled Products, LLC), groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. “Brazing sheet” means a layered aluminum alloy that consists of a core clad on one or both sides with an aluminum alloy whose melting temperature is lower than that of the core material. Brazing sheet is used primarily in making components of heat exchange systems (*e.g.*, radiators, oil coolers, and air conditioning units) for motor vehicles.

E. “Pechiney’s Brazing Sheet Business” means all assets, interests, and rights in Pechiney Rolled Products, LLC’s aluminum products rolling mill located in or near Ravenswood, West Virginia 26164 (“Ravenswood Facility”), including:

1. all tangible assets of the Ravenswood Facility and the real property on which the Ravenswood Facility is situated; any facilities used for research, development, and engineering support to the Ravenswood Facility (“the Engineering Facilities”), and any real property associated with those facilities; manufacturing and sales assets relating to the Ravenswood Facility and to the Engineering Facilities, including

capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Ravenswood Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Ravenswood Facility and to the Engineering Facilities; supply agreements; all customer lists, accounts, and credit records; and other records maintained by Pechiney Rolled Products in connection with the operations of the Ravenswood Facility and of the Engineering Facilities;

2. all intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or names “Pechiney” or any variation thereof), technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance

and control procedures, design tools and simulation capability, and all manuals and technical information Pechiney Rolled Products, LLC provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Ravenswood Facility; and

3. all research data concerning historic and current research and development efforts relating to the operations of the Ravenswood Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

F. “Date that Alcan’s tender offer for Pechiney ends” means the date Alcan receives a preliminary indication from the Conseil des Marches Financiers of Paris, France, that Alcan’s tender offer has been successful.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure Alcan’s and Pechiney’s prompt divestiture of Pechiney’s Brazing Sheet Business for the purpose of ensuring the establishment of a viable competitor in the brazing sheet industry capable of competing effectively to supply brazing sheet in North America and to remedy the anticompetitive effects that the United States alleges would otherwise result from Alcan’s acquisition of Pechiney. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that Pechiney’s Brazing Sheet Business is

operated as a competitively independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by the consummation of Alcan's acquisition of Pechiney, and that competition is maintained during the pendency of the ordered divestiture.

III.

JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Alcan shall abide by and comply with the provisions of the proposed Final Judgment, pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed

Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Alcan shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has voluntarily dismissed its Complaint herein; (2) withdrawn its consent, as provided in Section IV(A) above; or (3) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Alcan represents that the divestiture ordered in the proposed Final Judgment can and will be made, and that Alcan will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

Until the divestiture required by the Final Judgment has been accomplished:

A. After the date that Alcan's tender offer for Pechiney ends, Alcan shall preserve, maintain, and continue to operate Pechiney's Brazing Sheet Business as a competitively independent, economically viable part of an ongoing competitive business, with management, research, design, development, promotions, marketing, sales, and operations of such assets held entirely separate, distinct, and apart from Alcan's other operations. Within twenty (20) days after the entry of this Hold Separate Stipulation and Order, Alcan will inform the United States of the steps Alcan has taken to comply with this Hold Separate Stipulation and Order. Within ten (10) days after the date that Alcan's tender offer for Pechiney ends, Alcan will inform the United States of any additional steps it has taken to ensure that Pechiney complies with this Hold Separate Stipulation and Order.

B. After the date that Alcan's tender offer for Pechiney ends, Alcan shall take all steps necessary to ensure that Pechiney's Brazing Sheet Business will be maintained and operated as an independent, ongoing, economically viable and active competitor in the brazing sheet industry.

C. Alcan shall take all steps necessary to ensure that (1) management of Pechiney's Brazing Sheet Business (designated in Section V(K)) will not be influenced by Alcan, except to the extent necessary to carry out Alcan's obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment;

and (2) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning research, development, marketing, production, distribution, or sales of products by or under any of Pechiney's Brazing Sheet Business will be kept separate and apart from Alcan's other operations.

D. After the date that Alcan's tender offer for Pechiney ends, Alcan shall use all reasonable efforts to maintain and increase the research, development, sales, and revenues of the products produced or sold by Pechiney's Brazing Sheet Business, and shall maintain at 2003 levels or previously approved levels for 2004, whichever are higher, all research, development, product improvement, promotional, advertising, sales, technical assistance, marketing and merchandising support for any product developed, produced, or sold by Pechiney's Brazing Sheet Business.

E. After the date that Alcan's tender offer for Pechiney ends, Alcan shall provide sufficient working capital and lines and sources of credit to continue to maintain Pechiney's Brazing Sheet Business as an economically viable and competitive, ongoing business, consistent with the requirements of Sections V(A) and V(B).

F. After the date that Alcan's tender offer for Pechiney ends, Alcan shall take all steps necessary to ensure that the assets of Pechiney's Brazing Sheet Business are fully maintained in operable condition at no less than capacity and sales levels as of the date of filing of this Hold Separate Stipulation and Order, and shall maintain and adhere to normal product improvement and upgrade and repair

and maintenance schedules for each of those assets. In the event that the United States determines, in its sole discretion, that the financial or operating condition of Pechiney's Brazing Sheet Business has significantly diminished after the filing of this Hold Separate Stipulation and Order, Alcan shall immediately correct or restore Pechiney's Brazing Sheet Business to its financial and operating condition as of the filing of this Hold Separate Stipulation and Order.

G. After the date that Alcan's tender offer for Pechiney ends, Alcan shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any assets of Pechiney's Brazing Sheet Business; provided, however, that nothing in this provision prohibits Alcan or Pechiney from selling inventory in the ordinary course of business or, subject to the terms of Section IV(C)(2), offering a lender a security interest in assets pursuant to Pechiney's preexisting revolving lines of credit.

H. After the date that Alcan's tender offer for Pechiney ends, Alcan shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of Pechiney's Brazing Sheet Business.

I. Alcan shall take no action that would jeopardize, delay, or impede the sale of Pechiney's Brazing Sheet Business.

J. After the date that Alcan's tender offer for Pechiney ends, Pechiney employees with primary responsibility for the research, design, development,

promotion, distribution, sale, and operation of Pechiney's Brazing Sheet Business shall not be transferred or reassigned to other areas within Alcan or Pechiney, except for transfer bids initiated by employees pursuant to Pechiney's regular, established job posting policy. After the date that Alcan's tender offer for Pechiney ends, Alcan shall provide the United States with ten (10) calendar days notice of any such transfer.

K. Within ten (10) days after the date that Alcan's tender offer for Pechiney ends, Alcan shall appoint, subject to the approval of the United States, a person or persons to oversee Pechiney's Brazing Sheet Business, who will also be responsible for Alcan's and Pechiney's compliance with this section. This person or persons shall have complete managerial responsibility for Pechiney's Brazing Sheet Business, subject to the provisions of the Final Judgment. In the event that any such person is unable to perform his or her duties, Alcan shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Alcan fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement at Alcan's expense.

L. Alcan shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to an Acquirer acceptable to the United States.

M. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court.

Dated: _Sept. 29_, 2003.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

FOR DEFENDANTS
ALCAN INC. and ALCAN
ALUMINUM CORP.

_____/s/_____
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ORDER

IT IS SO ORDERED by the Court, this ____ day of _____ 2003.

United States District Judge